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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,720	12/09/2003	Eugene E. Osborne	8266-1201	5475
25267	7590	08/17/2004	EXAMINER	
BOSE MCKINNEY & EVANS LLP 135 N PENNSYLVANIA ST SUITE 2700 INDIANAPOLIS, IN 46204			SANTOS, ROBERT G	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,720

Applicant(s)

OSBORNE ET AL.

Examiner

Robert G. Santos

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003 and on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 83-102 is/are pending in the application.
- 4a) Of the above claim(s) 84,85,88,91,92 and 98 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 83,86,87,89,90,93-97 and 99-101 is/are rejected.
- 7) ☒ Claim(s) 102 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03042004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

SPECIES 1	FIGURES 1-7, 14, 17-35 & 40-47
SPECIES 2	FIGURES 8-13
SPECIES 3	FIGURES 15 & 16
SPECIES 4	FIGURES 36-39
SPECIES 5	FIGURE 48
SPECIES 6	FIGURE 49
SPECIES 7	FIGURES 50 & 51
SPECIES 8	FIGURES 52 & 53
SPECIES 9	FIGURES 54 & 55
SPECIES 10	FIGURES 56-58
SPECIES 11	FIGURES 59 & 60
SPECIES 12	FIGURES 61-91
SPECIES 13	FIGURES 92-112, 114 & 115
SPECIES 14	FIGURE 113
SPECIES 15	FIGURES 116-137.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Norman J. Hedges on August 9, 2004 a provisional election was made without traverse to prosecute the invention of Species 15, claims 83, 86, 87, 89, 90, 93-97 and 99-102. Affirmation of this election must be made by applicant in replying to

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this Office action. Claims 84, 85, 88, 91, 92 and 98 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

The disclosure is objected to because of the following informalities:

- 1) On page 132, in line 6: "2291" should be changed to --2291a--.
- 2) On page 132, in line 7: "2293" should be changed to --2291b--.

Appropriate correction is required.

Claim Objections

Claims 86, 89 and 97 are objected to because of the following informalities:

- 1) In claim 86, line 2: The term --end-- should be inserted after the term "second".
- 2) In claim 89, line 3: The term "lift" should be changed to --base--.
- 3) In claim 89, line 4: The term --the-- should be inserted before the term "mechanism".
- 4) In claim 97, line 8: The term "rotation" should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 83, 86, 87, 97, 100 and 101 are rejected under 35 U.S.C. 102(b) as being anticipated by Krauska '201. With regards to claims 83 and 97, Krauska '201 shows the claimed limitations of a patient support (10) comprising a frame (12), a deck (14) supported by the frame, the deck including a seat section (34) pivotable relative to the frame to move between first and second positions and a foot section (36) pivotable relative to the seat section to move between first and second positions (as shown in Figure 8), the seat section and foot section cooperating to define an angle when the seat section is in the second position, and a mechanism (120, 160) configured to control movement of the foot section relative to the seat section and for selecting the angle defined between the seat and foot section when the seat section is in the second position, the mechanism being configured to move between a first position wherein the foot section remains substantially horizontal when the seat section moves from the first position to the second position (as shown in Figure 7 and as described in column 4, lines 59-65) and a second position wherein the foot section deviates from being substantially horizontal when the seat section moves from the first position to the second position (as shown in Figure 8 and as described in column 4, lines 66-67 and in column 5, lines 1-7). As concerns claim 86, the

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reference discloses a condition wherein the mechanism has a first end and a second end and a distance between the first and second ends remains substantially constant when the mechanism is in the first position (see Figures 7 & 8; column 3, lines 66-67 and column 4, lines 1-11 & 45-52). With regards to claim 87, the reference is considered to show a condition wherein the mechanism includes a linear actuator (120) having a first length that remains substantially constant when the mechanism is in the second position (see Figure 8). As concerns claims 100 and 101, the reference discloses a condition wherein the selecting means extends to the foot section and frame (see Figures 7 and 8).

Claims 83, 86, 87, 89, 97 and 99-101 are rejected under 35 U.S.C. 102(b) as being anticipated by Peck '529. With regards to claims 83 and 97, Peck '529 shows the claimed limitations of a patient support comprising a frame (10, 15), a deck (25) supported by the frame, the deck including a seat section (33) pivotable relative to the frame to move between first and second positions and a foot section (35) pivotable relative to the seat section to move between first and second positions, the seat section and foot section cooperating to define an angle when the seat section is in the second position, and a mechanism (55, 70) configured to control movement of the foot section relative to the seat section and for selecting the angle defined between the seat and foot section when the seat section is in the second position, the mechanism being configured to move between a first position wherein the foot section remains substantially horizontal when the seat section moves from the first position to the second position (as shown in Figures 1 and 2) and a second position wherein the foot section deviates from being substantially horizontal when the seat section moves from the first position to the second position (as shown in

Figures 8 and 9). As concerns claim 86, the reference discloses a condition wherein the mechanism has a first end and a second end and a distance between the first and second ends remains substantially constant when the mechanism is in the first position (as shown in Figures 1 & 2 and as described in column 4, lines 4-10). With regards to claims 87 and 99, the reference is considered to show a condition wherein the mechanism includes a linear actuator (70) having a first length that remains substantially constant when the mechanism is in the second position. As concerns claim 89, the reference discloses a condition wherein the frame includes a base frame (10), an intermediate frame (15), an a plurality of lift arms (18, 21) configured to raise and lower the intermediate frame relative to the base frame, the foot section remains substantially parallel to the intermediate frame when the mechanism is in the first position and the seat section moves to the second position (see Figures 1 and 2). With regards to claims 100 and 101, the reference discloses a condition wherein the selecting means extends to the foot section (35) and frame (15) (see Figures 1, 2, 8 & 9 and column 4, lines 4-6).

Claims 90, 94-97 and 99-101 are rejected under 35 U.S.C. 102(b) as being anticipated by Pupovic '929. With regards to claims 90 and 97, Pupovic '929 shows the claimed limitations of a patient support comprising a frame (1), a deck supported by the frame, the deck including a seat section (11) pivotable relative to the frame to move between first and second positions and a foot section (13) pivotable relative to the seat section to move between first and second positions, the seat section and foot section cooperating to define an angle when the seat section is in the second position, and a linkage (15) for selecting the angle defined between the seat and foot section when the seat section is in the second position and having a first end and a second end

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coupled to the foot section of the deck, the linkage having a first configuration wherein a distance between the first and second end remains substantially constant during movement of the seat section between the first and second positions (as shown in Figures 1 and 7) and a second configuration wherein the distance substantially decreases during movement of the seat section between the first and second positions (as shown in Figures 3 and 5). As concerns claims 94 and 95, the reference is considered to show a condition wherein the linkage has an adjustable length and includes telescoping members in Figures 1-7 and in column 2, lines 57-59. With regards to claim 96, the reference discloses a condition wherein the frame includes a base frame (1), an intermediate frame (6, 12), and lift arms (9, 17) configured to raise and lower the intermediate frame relative to the base frame, the foot section remains substantially parallel to the intermediate frame when the linkage is in the first configuration (as shown in Figures 1 and 7). As concerns claim 99, the reference is considered to show a condition wherein the selecting means includes a linear actuator in Figures 1-7 and in column 2, lines 57-59. With regards to claims 100 and 101, the reference discloses a condition wherein the selecting means extends to the foot section and frame (see Figures 1-7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pupovic '929 in view of Foster et al. '113. Pupovic '929 does not specifically disclose a condition wherein the foot section (13) has an adjustable length. Foster et al. '113 provide the basic teaching of a patient support (10) comprising a foot section (100c) having an adjustable length (see Figure 3 and column 6, lines 28-41). The skilled artisan would have found it obvious at the time the invention was made to provide the patient support of Pupovic '929 with a foot section having an adjustable length in order to "allow the foot [section] to be adjusted for individual patients", thereby ensuring enhanced comfort for a variety of users positioned on the patient support (see Foster et al. '113, column 6, lines 35-37).

Allowable Subject Matter

Claim 102 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The examiner respectfully asserts that one of ordinary skill in the art would not have found it obvious to modify the respective patient supports of Krauska '201 and Peck '529 to include a frame having both a base frame *and* an intermediate frame wherein the intermediate frame *nests with the base frame* as explicitly recited in claim 102.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Osborne et al. '765, Welling et al. '936, Osborne et al. '346, Osborne et al. '680, Welling et al. '979, Osborne et al. '142, Osborne et al. '742, Krauska '718, Hayes et al. '004,

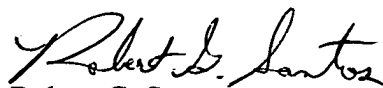
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Hayes et al. '274, Peterson '010, Peterson '486, Willis '463, Bergenwall '351, Lindblom et al. '926, Kerstholt '461, Kjellberg et al. '528, Propst '255 and Katz '765.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
August 13, 2004